

Off. of Postsecondary Educ., Education

§ 682.401

Excess interest is calculated and recovered each quarter by subtracting the special allowance support level from the applicable interest rate, multiplying the result by the average daily principal balance of the loan (not including unearned interest added to principal) during the quarter, and dividing by four.

(2) The term *special allowance support level* means a number expressed as a percentage equal to the sum of—

(i) The average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H-15 (or its successor) for such 3-month period; plus

(ii) 2.34 percent for a Federal Stafford loan in repayment;

(iii) 1.74 percent for a Federal Stafford loan during the in-school, grace, and deferment periods; or

(iv) 2.64 percent for a Federal PLUS or Consolidation Loan.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9119, Feb. 19, 1993; 59 FR 61428, Nov. 30, 1994; 60 FR 31411, June 15, 1995; 64 FR 18978, Apr. 16, 1999; 64 FR 58627, Oct. 29, 1999; 71 FR 45705, Aug. 9, 2006; 71 FR 64398, Nov. 1, 2006; 72 FR 62003, Nov. 1, 2007]

Subpart D—Administration of the Federal Family Education Loan Programs by a Guaranty Agency

§ 682.400 Agreements between a guaranty agency and the Secretary.

(a) The Secretary enters into agreements with a guaranty agency whose loan guarantee program meets the requirements of this subpart. The agreements enable the guaranty agency to participate in the FFEL programs and to receive the various payments and benefits related to that participation.

(b) There are four agreements:

(1) *Basic program agreement.* In order to participate in the FFEL programs, a guaranty agency must have a basic program agreement. Under this agreement—

(i) Borrowers whose Stafford and Consolidation loans that consolidate only subsidized Stafford loans are guaranteed by the agency may qualify for interest benefits that are paid to the lender on the borrower's behalf; and

(ii) Lenders under the guaranty agency program may receive special allowance payments from the Secretary and have death, disability, bankruptcy, closed school and false certification discharge claims paid by the Secretary through the guaranty agency.

(2) *Federal advances for claim payments agreement.* A guaranty agency must have an agreement for Federal advances for claim payments to receive and use Federal advances to pay default claims.

(3) *Reinsurance agreement.* A guaranty agency must have a reinsurance agreement to receive reimbursement from the Secretary for its losses on default claims.

(4) *Loan Rehabilitation Agreement.* A guaranty agency must have an agreement for rehabilitating a loan for which the Secretary has made a reinsurance payment under section 428(c)(1) of the Act.

(c) The Secretary's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(d) All of the agreements are subject to subsequent changes in the Act, in other applicable Federal statutes, and in regulations that apply to the FFEL programs.

(Authority: 20 U.S.C. 1072, 1078-1, 1078-2, 1078-3, 1082, 1087, 1087-1)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 33353, June 28, 1994; 64 FR 18978, Apr. 16, 1999; 64 FR 58627, Oct. 29, 1999]

§ 682.401 Basic program agreement.

(a) *General.* In order to participate in the FFEL programs, a guaranty agency shall enter into a basic agreement with the Secretary.

(b) *Terms of agreement.* In the basic agreement, the guaranty agency shall agree to ensure that its loan guarantee program meets the following requirements at all times:

(1) *Aggregate loan limits.* The aggregate guaranteed unpaid principal amount for all Stafford and SLS, loans made to a borrower may not exceed the

§ 682.401

34 CFR Ch. VI (7–1–08 Edition)

amounts set forth in § 682.204 (b), (e), and (g).

(2) *Annual loan limits.* (i) The annual loan maximum amount for a borrower that may be guaranteed for an academic year may not exceed the amounts set forth in § 682.204 (a), (c), (d), (f), and (h).

(ii) A guaranty agency may make the loan amounts authorized under paragraph (b)(2)(i) of this section applicable for either—

(A) A period of not less than that attributable to the academic year, as defined in 34 CFR 668.3; or

(B) A period attributable to the academic year that is not less than the period specified in paragraph (b)(2)(ii)(A) of this section, in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example, from freshman to sophomore or, in the case of schools using clock hours, completion of at least 900 clock hours).

(iii) The amount of a loan guaranteed may not exceed the amount set forth in § 682.204(k).

(3) *Duration of borrower eligibility.* (i) A student borrower under the Stafford Loan Program or the PLUS Loan Program and a parent borrower under the PLUS Program are eligible to receive a guaranteed loan for any year of the student's study at a participating school.

(ii) Loans must be available to or on behalf of any student for at least six academic years of study.

(4) *Reinstatement of borrower eligibility.* Except as provided in § 668.35(b) for a borrower with a defaulted loan on which a judgment has been obtained and § 668.35(i) for a borrower who fraudulently obtained title IV, HEA program assistance, reinstatement of Title IV eligibility for a borrower with a defaulted loan must be in accordance with this paragraph (b)(4). For a borrower's loans held by a guaranty agency on which a reinsurance claim has been paid by the Secretary, the guaranty agency must afford a defaulted borrower, upon the borrower's request, renewed eligibility for Title IV assist-

ance once the borrower has made satisfactory repayment arrangements as that term is defined in § 682.200.

(i) For purposes of this section, the determination of reasonable and affordable must—

(A) Include consideration of the borrower's and spouse's disposable income and necessary expenses including, but not limited to, housing, utilities, food, medical costs, dependent care costs, work-related expenses and other Title IV repayment;

(B) Not be a required minimum payment amount, e.g. \$50, if the agency determines that a smaller amount is reasonable and affordable based on the borrower's total financial circumstances. The agency must include documentation in the borrower's file of the basis for the determination, if the monthly reasonable and affordable payment established under this section is less than \$50.00 or the monthly accrued interest on the loan, whichever is greater.

(C) Be based on the documentation provided by the borrower or other sources including, but not limited to—

(1) Evidence of current income (e.g. proof of welfare benefits, Social Security benefits, Supplemental Security Income, Workers' Compensation, child support, veterans' benefits, two most recent pay stubs, most recent copy of U.S. income tax return, State Department of Labor reports);

(2) Evidence of current expenses (e.g. a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(3) A statement of the unpaid balance on all FFEL loans held by other holders.

(ii) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances upon providing the documentation specified in paragraph (b)(4)(i)(C) of this section.

(iii) A guaranty agency must provide the borrower with a written statement of the reasonable and affordable payment amount required for the reinstatement of the borrower's eligibility for Title IV student assistance, and provide the borrower with an opportunity to object to those terms.

(iv) A guaranty agency must provide the borrower with written information regarding the possibility of loan rehabilitation if the borrower makes three additional reasonable and affordable monthly payments after making payments to regain eligibility for Title IV assistance and the consequences of loan rehabilitation.

(v) A guaranty agency must inform the borrower that he or she may only obtain reinstatement of borrower eligibility under this section once.

(5) *Borrower responsibilities.* (i) The borrower must indicate his or her preferred lender on the promissory note or other written or electronic documentation submitted during the loan origination process if he or she has such a preference.

(ii) The borrower must give the lender, as part of the promissory note or application process for a parent PLUS loan—

(A) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(B) A statement from the student authorizing the school to release information relevant to the student's eligibility to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records); and

(C) Information from the school providing the maximum amount that may be borrowed on behalf of the student.

(iii) The borrower shall give the lender, as part of the application process for a Consolidation loan—

(A) Information demonstrating that the borrower is eligible for the loan under § 682.201(c); and

(B) A statement that the borrower does not currently have another application for a Consolidation loan pending.

(iv) The borrower shall promptly notify—

(A) The current holder or the guaranty agency of any change of name, address, student status to less than half-time, employer, or employer's address; and

(B) The school of any change in local address during enrollment.

(6) *School eligibility*—(i) *General.* A school that has a program participa-

tion agreement in effect with the Secretary under § 682.14(a) is eligible to participate in the program of the agency under reasonable criteria established by the guaranty agency, and approved by the Secretary, under paragraph (d)(2) of this section, except to the extent that—

(A) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR part 668 or by the guaranty agency under standards and procedures that are substantially the same as those in 34 CFR part 668;

(B) The Secretary upholds the limitation, suspension, or termination of a school by a guaranty agency and extends that sanction to all guaranty agency programs under section 432(h)(3) of the Act or § 682.713;

(C) The school is ineligible under section 435(a)(2) of the Act;

(D) There is a State constitutional prohibition affecting the school's eligibility;

(E) The school's programs consist of study solely by correspondence;

(F) The agency determines, subject to the agreement of the Secretary, that the school does not satisfy the standards of administrative capability and financial responsibility as defined in 34 CFR part 668;

(G) The school fails to make timely refunds to students as required in § 682.607(c);

(H) The school has not satisfied, within 30 days of issuance, a final judgment obtained by a student seeking a refund;

(I) The school or an owner, director, or officer of the school is found guilty or liable in any criminal, civil, or administrative proceeding regarding the obtaining, maintenance, or disbursement of State or Federal student grant, loan, or work assistance funds; or

(J) The school or an owner, director, or officer of the school has unpaid financial liabilities involving the improper acquisition, expenditure, or refund of State or Federal student financial assistance funds.

(ii) *Limitation by a guaranty agency of a school's participation.* For purposes of this paragraph, a school that is subject to limitation of participation in the

guaranty agency's program may be either a school that is applying to participate in the agency's program for the first time, or a school that is renewing its application to continue participation in the agency's program. A guaranty agency may limit the total number of loans or the volume of loans made to students attending a particular school, or otherwise establish appropriate limitations on the school's participation, if the agency makes a determination that the school does not satisfy—

(A) The standards of financial responsibility defined in 34 CFR 668.5; or

(B) The standards of administrative capability defined in 34 CFR 668.16.

(iii) *Limitation, suspension, or termination of school eligibility.* A guaranty agency may limit, suspend, or terminate the participation of an eligible school. If a guaranty agency limits, suspends, or terminates the participation of a school from the agency's program, the Secretary applies that limitation, suspension, or termination to all locations of the school.

(iv) *Condition for guaranteeing loans for students attending a school.* The guaranty agency may require the school to execute a participation agreement with the agency and to submit documentation that establishes the school's eligibility to participate in the agency's program.

(7) *Lender eligibility.* (i) An eligible lender may participate in the program of the agency under reasonable criteria established by the guaranty agency except to the extent that—

(A) The lender's eligibility has been limited, suspended, or terminated by the Secretary under subpart G of this part or by the agency under standards and procedures that are substantially the same as those in subpart G of this part; or

(B) The lender is disqualified by the Secretary under sections 432(h)(1), 432(h)(2), 435(d)(3), or 435(d)(5) of the Act or § 682.712; or

(C) There is a State constitutional prohibition affecting the lender's eligibility.

(ii) The agency may not guarantee a loan made by a school lender that is not located in the geographical area that the agency serves.

(iii) The guaranty agency may refuse to guarantee loans made by a school on behalf of students not attending that school.

(iv) The guaranty agency may, in determining whether to enter into a guarantee agreement with a lender, consider whether the lender has had prior experience in a similar Federal, State, or private nonprofit student loan program and the amount and percentage of loans that are currently delinquent or in default under that program.

(8) *Out-of-State schools.* The agency shall guarantee Stafford, SLS, and PLUS loans for students who are legal residents of any State served by the agency under § 682.404(h)(2) but who attend schools out of that State and for parents who are legal residents of that State and are borrowing on behalf of students attending schools out of that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply to borrowers who are legal residents of the State attending in-State schools or to parent borrowers who are legal residents of the State and are borrowing for students attending in-State schools.

(9) *Out-of-State residents.* The agency shall guarantee Stafford, SLS, and PLUS loans for students who are not legal residents of any State served by the agency under § 682.404(h)(2) but who attend schools in that State, and for parents who are not legal residents of that State and who are borrowing on behalf of students attending schools in that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply to borrowers who are legal residents of the State attending in-State schools, or to parent borrowers who are legal residents of the State and who are borrowing for students attending in-State schools.

(10) *Insurance premiums and Federal default fees.* (i) Except for a Consolidation Loan or SLS or PLUS loans refinanced under § 682.209 (e) or (f), a guaranty agency:

(A) May charge the lender an insurance premium for Stafford, SLS, or PLUS loans it guarantees prior to July 1, 2006; and

(B) Must collect, either from the lender or by payment from any other non-Federal source, a Federal default fee for any Stafford or PLUS loans it guarantees on or after July 1, 2006, to be deposited into the Federal Fund under § 682.419.

(ii) The guaranty agency may not use the Federal default fee for incentive payments to lenders, and may only use the insurance premium or the Federal default fee for costs incurred in guaranteeing loans or in the administration of the agency's loan guarantee program, as specified in § 682.410(a)(2) or § 682.419(c).

(iii) If a lender charges the borrower an insurance premium or Federal default fee, the lender must deduct the charge proportionately from each disbursement of the borrower's loan proceeds.

(iv) The amount of the insurance premium or Federal default fee, as applicable—

(A) May not exceed 3 percent of the principal balance for a loan disbursed on or before June 30, 1994;

(B) May not exceed 1 percent of the principal balance for a loan disbursed on or after July 1, 1994;

(C) Shall be 1 percent of the principal balance of a loan guaranteed on or after July 1, 2006.

(v) If the circumstances specified in paragraph (vi) exist, the guaranty agency shall refund to the lender any insurance premium or Federal default fee paid by the lender.

(vi) The lender shall refund to the borrower by a credit against the borrower's loan balance the insurance premium or Federal default fee paid by the borrower on a loan under the following circumstances:

(A) The insurance premium or Federal default fee attributable to each disbursement of a loan must be refunded if the loan check is returned uncashed to the lender.

(B) The insurance premium or Federal default fee, or an appropriate prorated amount of the premium or fee, must be refunded by application to the borrower's loan balance if—

(I) The loan or a portion of the loan is returned by the school to the lender in order to comply with the Act or with applicable regulations;

(2) Within 120 days of disbursement, the loan or a portion of the loan is repaid or returned, unless—

(i) The borrower has no FFEL Program loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or

(ii) The borrower has a FFEL Program loan in repayment status, in which case the payment is applied in accordance with § 682.209(b) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan;

(3) Within 120 days of disbursement, the loan check has not been negotiated; or

(4) Within 120 days of disbursement, the loan proceeds disbursed by electronic funds transfer or master check in accordance with § 682.207(b)(1)(ii) (B) and (C) have not been released from the restricted account maintained by the school.

(11) *Inquiries.* The agency must be able to receive and respond to written, electronic, and telephone inquiries.

(12) *Administrative fee for Consolidation loans.* The guaranty agency may charge a lender a fee, not to exceed \$50, reasonably calculated to cover the agency's cost of increased or extended liability incurred in guaranteeing a Consolidation loan. The lender may not pass the fee on to the borrower. If it charges the fee, the agency must charge it for all loans made under the agency's Consolidation Loan program.

(13) *Administrative fee for refinancing fixed-rate PLUS or SLS loans.* The guaranty agency may require a lender to pay to the guaranty agency up to 50 percent of the fee the lender charges a borrower under § 682.202(e) for the purpose of defraying the agency's administrative costs incident to the guarantee of a lender's reissuance of a fixed-rate PLUS or SLS loan at a variable interest rate. If it charges the fee, the agency must charge the same fee to all lenders that refinance under this paragraph.

(14) *Guaranty liability.* The guaranty agency shall guarantee—

(i) 100 percent of the unpaid principal balance of each loan guaranteed for loans disbursed before October 1, 1993;

(ii) Not more than 98 percent of the unpaid principal balance of each loan guaranteed for loans first disbursed on or after October 1, 1993 and before July 1, 2006; and

(iii) Not more than 97 percent of the unpaid principal balance of each loan guaranteed for loans first disbursed on or after July 1, 2006.

(15) *Guaranty agency verification of default data.* A guaranty agency must meet the requirements and deadlines provided for it in subpart M of 34 CFR part 668 for the cohort default rate process.

(16) *Guaranty agency administration.* In the case of a State loan guarantee program administered by a State government, the program must be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the supervision of a single State agency. For this purpose, “supervision” includes, but is not limited to, setting policies and procedures, and having full responsibility for the operation of the program.

(17) *Loan assignment.* (i) Except as provided in paragraph (b)(17)(iii) of this section, the guaranty agency must allow a loan to be assigned only if the loan is fully disbursed and is assigned to—

(A) An eligible lender;

(B) A guaranty agency, in the case of a borrower’s default, death, total and permanent disability, or filing of a bankruptcy petition, or for other circumstances approved by the Secretary, such as a loan made for attendance at a school that closed or a false certification claim;

(C) An educational institution, whether or not it is an eligible lender, in connection with the institution’s repayment to the agency or to the Secretary of a guarantee or a reinsurance claim payment made on a loan that was ineligible for the payment;

(D) A Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender; or

(E) The Secretary.

(ii) For the purpose of this paragraph, “assigned” means any kind of transfer of an interest in the loan, in-

cluding a pledge of such an interest as security.

(iii) The guaranty agency must allow a loan to be assigned under paragraph (b)(17)(i) of this section, following the first disbursement of the loan if the assignment does not result in a change in the identity of the party to whom payments must be made.

(18) *Transfer of guarantees.* Except in the case of a transfer of guarantee requested by a borrower seeking a transfer to secure a single guarantor, the guaranty agency may transfer its guarantee obligation on a loan to another guaranty agency, only with the approval of the Secretary, the transferee agency, and the holder of the loan.

(19) *Standards and procedures.* (i) The guaranty agency shall establish, disseminate to concerned parties, and enforce standards and procedures for—

(A) Ensuring that all lenders in its program meet the definition of “eligible lender” in section 435(d) of the Act and have a written lender agreement with the agency;

(B) School and lender participation in its program;

(C) Limitation, suspension, termination of school and lender participation;

(D) Emergency action against a participating school or lender;

(E) The exercise of due diligence by lenders in making, servicing, and collecting loans; and

(F) The timely filing by lenders of default, death, disability, bankruptcy, closed school, false certification unpaid refunds, identity theft, and ineligible loan claims.

(ii) The guaranty agency shall ensure that its program and all participants in its program at all times meet the requirements of subparts B, C, D, and F of this part.

(20) *Monitoring student enrollment.* The guaranty agency shall monitor the enrollment status of a FFEL program borrower or student on whose behalf a parent has borrowed that includes, at a minimum, reporting to the current holder of the loan within 35 days any change in the student’s enrollment status reported that triggers—

(i) The beginning of the borrower’s grace period; or

(ii) The beginning or resumption of the borrower's immediate obligation to make scheduled payments.

(21) *Submission of interest and special allowance information.* Upon the Secretary's request, the guaranty agency shall submit, or require its lenders to submit, information that the Secretary deems necessary for determining the amount of interest benefits and special allowance payable on the agency's guaranteed loans.

(22) *Submission of information for reports.* The guaranty agency shall require lenders to submit to the agency the information necessary for the agency to complete the reports required by § 682.414(b).

(23) *Guaranty agency transfer of information.* (i) A guaranty agency from which another guaranty agency requests information regarding Stafford and SLS loans made after January 1, 1987, to students who are residents of the State for which the requesting agency is the principal guaranty agency shall provide—

(A) The name and social security number of the student; and

(B) The annual loan amount and the cumulative amount borrowed by the student in loans under the Stafford and SLS programs guaranteed by the responding agency.

(ii) The reasonable costs incurred by an agency in fulfilling a request for information made under paragraph (b)(23)(i) of this section must be paid by the guaranty agency making the request.

(24) *Information on defaults.* The guaranty agency shall, upon the request of a school, furnish information with respect to students, including the names and addresses of such students, who were enrolled at that school and who are in default on the repayment of any loan guaranteed by that agency.

(25) *Information on loan sales or transfers.* The guaranty agency must, upon the request of a school, furnish to the school last attended by the student, information with respect to the sale or transfer of a borrower's loan prior to the beginning of the repayment period, including—

(i) Notice of assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party by which contact may be made with the holder concerning repayment of the loan; and

(iv) The telephone number of the assignee or, if the assignee uses a lender servicer, another appropriate number for borrower inquiries.

(26) *Third-party servicers.* The guaranty agency may not enter into a contract with a third-party servicer that the Secretary has determined does not meet the financial and compliance standards under § 682.416. The guaranty agency shall provide the Secretary with the name and address of any third-party servicer with which the agency enters into a contract and, upon request by the Secretary, a copy of that contract.

(27) *Consolidation of defaulted FFEL loans.*

(i) A guaranty agency may charge collection costs in an amount not to exceed 18.5 percent of the outstanding principal and interest on a defaulted FFEL Program loan that is paid off by a Federal Consolidation loan.

(ii) Prior to October 1, 2006, when returning the proceeds from the consolidation of a defaulted loan to the Secretary, a guaranty agency may only retain the amount charged to the borrower pursuant to this paragraph.

(iii) On or after October 1, 2006, when returning proceeds to the Secretary from the consolidation of a defaulted loan, a guaranty agency that charged the borrower collection costs must remit an amount that equals the lesser of the actual collection costs charged or 8.5 percent of the outstanding principal and interest of the loan.

(iv) On or after October 1, 2009, when returning proceeds to the Secretary from the consolidation of a defaulted loan that is paid off with excess consolidation proceeds as defined in paragraph (b)(27)(v) of this section, a guaranty agency must remit the entire amount of collection costs repaid through the consolidation loan pursuant to paragraph (b)(27)(ii) of this section.

(v) The term *excess consolidation proceeds* means, for any Federal fiscal year beginning on or after October 1, 2009, the amount of Consolidation Loan proceeds received for defaulted loans

under the FFEL Program that exceed 45 percent of the agency's total collections on defaulted loans in that Federal fiscal year.

(28) *Change in agency's records system.* The agency shall provide written notification to the Secretary at least 30 days prior to placing its new guarantees or converting the records relating to its existing guaranty portfolio to an information or computer system that is owned by, or otherwise under the control of, an entity that is different than the party that owns or controls the agency's existing information or computer system. If the agency is soliciting bids from third parties with respect to a proposed conversion, the agency shall provide written notice to the Secretary as soon as the solicitation begins. The notification described in this paragraph must include a concise description of the agency's conversion project and the actual or estimated cost of the project.

(29) *Plans to Reduce Consolidation of defaulted loans.* A guaranty agency shall establish and submit to the Secretary for approval, procedures to ensure that consolidation loans are not an excessive proportion of the guaranty agency's recoveries on defaulted loans.

(c) *Lender-of-last-resort.* (1) The guaranty agency must ensure that it, or an eligible lender described in section 435(d)(1)(D) of the Act, serves as a lender-of-last-resort in the State in which the guaranty agency is the designated guaranty agency. The guaranty agency or an eligible lender described in section 435(d)(1)(D) of the Act may arrange for a loan required to be made under paragraph (c)(2) of this section to be made by another eligible lender. As used in this paragraph, the term "designated guaranty agency" means the guaranty agency in the State for which the Secretary has signed a Basic Program Agreement under this section.

(2) The lender-of-last-resort must make subsidized Federal Stafford loans and unsubsidized Federal Stafford loans to any eligible student who—

- (i) Qualifies for interest benefits pursuant to § 682.301;
- (ii) Qualifies for a combined loan amount of at least \$200; and

- (iii) Has been otherwise unable to obtain loans from another eligible lender for the same period of enrollment.

(3) The lender-of-last resort may make unsubsidized Federal Stafford and Federal PLUS loans to borrowers who have been otherwise unable to obtain those loans from another eligible lender.

(4) The guaranty agency must develop policies and operating procedures for its lender-of-last-resort program that provide for the accessibility of lender-of-last-resort loans. These policies and procedures must be submitted to the Secretary for approval as required under paragraph (d)(2) of this section. The policies and procedures for the agency's lender-of-last-resort program must ensure that—

- (i) The guaranty agency will serve eligible students attending any eligible school;

- (ii) The program establishes operating hours and methods of application designed to facilitate application by students; and

- (iii) Information about the availability of loans under the program is made available to schools in the State;

- (iv) Appropriate steps are taken to ensure that borrowers receiving loans under the program are appropriately counseled on their loan obligation;

- (v) The guaranty agency will respond to a student within 60 days after the student submits an original complete application; and

- (vi) Borrowers are not required to obtain more than two objections from eligible lenders prior to requesting assistance under the lender-of-last-resort program.

(5)(i) Upon request of the guaranty agency, the Secretary may advance Federal funds to the agency, on terms and conditions agreed to by the Secretary and the agency, to ensure the availability of loan capital for subsidized and unsubsidized Federal Stafford and Federal PLUS loans to borrowers who are otherwise unable to obtain those loans if the Secretary determines that—

- (A) Eligible borrowers in a State who qualify for subsidized Federal Stafford loans are seeking and are unable to obtain subsidized Federal Stafford loans;

(B) The guaranty agency designated for that State has the capability for providing lender-of-last-resort loans in a timely manner, either directly or indirectly using a third party, in accordance with the guaranty agency's obligations under the Act, but cannot do so without advances provided by the Secretary; and

(C) It would be cost-effective to advance Federal funds to the agency.

(ii) If the Secretary determines that the designated guaranty agency does not have the capability to provide lender-of-last-resort loans, in accordance with paragraph (c)(5)(i) of this section, the Secretary may provide Federal funds to another guaranty agency, under terms and conditions agreed to by the Secretary and the agency, to make lender-of-last-resort loans in that State.

(d) *Review of forms and procedures.* (1) The guaranty agency shall submit to the Secretary its write-off criteria and procedures. The agency may not use these materials until the Secretary approves them.

(2) The guaranty agency shall promptly submit to the Secretary its regulations, statements of procedures and standards, agreements, and other materials that substantially affect the operation of the agency's program, and any proposed changes to those materials. Except as provided in paragraph (d)(1) of this section, the agency may use these materials unless and until the Secretary disapproves them.

(3) The guaranty agency must use common application forms, promissory notes, Master Promissory Notes (MPN), and other common forms approved by the Secretary.

(4)(i) The Secretary authorizes the use of the multi-year feature of the MPN—

(A) For students and parents for attendance at four-year or graduate/professional schools; and

(B) For students and parents for attendance at other institutions meeting criteria or otherwise designated at the sole discretion of the Secretary.

(ii) The Secretary may prohibit use of the multi-year feature of the MPN at specific schools described under paragraph (4)(i) of this section under circumstances including, but not lim-

ited to, the school being subject to an emergency action or a limitation, suspension, or termination action, or not meeting other performance criteria determined by the Secretary.

(iii) A student or parent borrower who is borrowing funds for attendance at a school for which the multi-year feature of the MPN has not been authorized must complete a new promissory note for each academic year.

(iv) Each loan made under an MPN is enforceable in accordance with the terms of the MPN and is eligible for claim payment based on a true and exact copy of such MPN.

(v) A lender's ability to make additional loans under an MPN will automatically expire upon the earliest of—

(A) The date the lender receives written notification from the borrower requesting that the MPN no longer be used as the basis for additional loans;

(B) Twelve months after the date the borrower signed the MPN if no disbursements are issued by the lender under that MPN; or

(C) Ten years from the date the borrower signed the MPN or the date the lender receives the MPN. However, if a portion of a loan is made on or before 10 years from the signature date, remaining disbursements of that loan may be made.

(vi) The lender and school must develop and document a confirmation process in accordance with guidelines established by the Secretary for loans made under the multi-year feature of the MPN.

(5) The guaranty agency must develop and implement appropriate procedures that provide for the granting of a student deferment as specified in § 682.210(a)(6)(iv) and (c)(3) and require their lenders to use these procedures.

(6) The guaranty agency shall ensure that all program materials meet the requirements of Federal and State law, including, but not limited to, the Act and the regulations in this part and part 668.

(e) *Prohibited activities.* (1) A guaranty agency may not, directly or through an agent or contractor—

(i) Except as provided in paragraph (e)(2) of this section, offer directly or indirectly from any fund or assets available to the guaranty agency, any

premium, payment, or other inducement to any prospective borrower of an FFEL loan, or to a school or school-affiliated organization or an employee of a school or school-affiliated organization, to secure applications for FFEL loans. This includes, but is not limited to—

(A) Payments or offerings of other benefits, including prizes or additional financial aid funds, to a prospective borrower in exchange for processing a loan using the agency's loan guarantee;

(B) Payments or other benefits, including prizes or additional financial aid funds under any Title IV or State or private program, to a school or school-affiliated organization based on the school's or organization's voluntary or coerced agreement to use the guaranty agency for processing loans, or to provide a specified volume of loans using the agency's loan guarantee;

(C) Payments or other benefits to a school or any school-affiliated organization, or to any individual in exchange for FFEL loan applications or application referrals, a specified volume or dollar amount of FFEL loans using the agency's loan guarantee, or the placement of a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders;

(D) Payment of entertainment expenses, including expenses for private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation or other gratuities related to any activity sponsored by the guaranty agency or a lender participating in the agency's program, for school employees or employees of school-affiliated organizations;

(E) Philanthropic activities, including providing scholarships, grants, restricted gifts, or financial contributions in exchange for FFEL loan applications or application referrals, a specified volume or dollar amount of FFEL loans using the agency's loan guarantee, or the placement of a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders; and

(F) Staffing services to a school, except for services provided to partici-

pating foreign schools at the direction of the Secretary, as a third-party servicer or otherwise on more than a short-term, emergency basis, which is non-recurring, to assist the institution with financial aid-related functions.

(ii) Assess additional costs or deny benefits otherwise provided to schools and lenders participating in the agency's program on the basis of the lender's or school's failure to agree to participate in the agency's program, or to provide a specified volume of loan applications or loan volume to the agency's program or to place a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders.

(iii) Offer, directly or indirectly, any premium, incentive payment, or other inducement to any lender, or any person acting as an agent, employee, or independent contractor of any lender or other guaranty agency to administer or market FFEL loans, other than unsubsidized Stafford loans or subsidized Stafford loans made under a guaranty agency's lender-of-last-resort program, in an effort to secure the guaranty agency as an insurer of FFEL loans. Examples of prohibited inducements include, but are not limited to—

(A) Compensating lenders or their representatives for the purpose of securing loan applications for guarantee;

(B) Performing functions normally performed by lenders without appropriate compensation;

(C) Providing equipment or supplies to lenders at below market cost or rental; and

(D) Offering to pay a lender that does not hold loans guaranteed by the agency a fee for each application forwarded for the agency's guarantee.

(iv) Mail or otherwise distribute unsolicited loan applications to students enrolled in a secondary school or a postsecondary institution, or to parents of those students, unless the potential borrower has previously received loans insured by the guaranty agency.

(v) Conduct fraudulent or misleading advertising concerning loan availability.

(2) Notwithstanding paragraph (e)(1)(i), (ii), and (iii) of this section, a

guaranty agency is not prohibited from providing—

(i) Assistance to a school that is comparable to that provided by the Secretary to a school under the Direct Loan Program, as identified by the Secretary in a public announcement, such as a notice in the FEDERAL REGISTER;

(ii) Default aversion activities approved by the Secretary under section 422(h)(4)(B) of the Act;

(iii) Student aid and financial-literacy related outreach activities, excluding in-person school-required initial and exit counseling, as long as the name of the entity that developed and paid for any materials is provided to participants and the guaranty agency does not promote its student loan or other products; but a guaranty agency may promote benefits provided under other Federal or State programs administered by the guaranty agency;

(iv) Meals and refreshments that are reasonable in cost and provided in connection with guaranty agency provided training of program participants and elementary, secondary, and postsecondary school personnel and with workshops and forums customarily used by the agency to fulfill its responsibilities under the Act;

(v) Meals, refreshments and receptions that are reasonable in cost and scheduled in conjunction with training, meeting, or conference events if those meals, refreshments, or receptions are open to all training, meeting, or conference attendees;

(vi) Travel and lodging costs that are reasonable as to cost, location, and duration to facilitate the attendance of school staff in training or service facility tours that they would otherwise not be able to undertake, or to participate in the activities of an agency's governing board, a standing official advisory committee, or in support of other official activities of the agency;

(vii) Toll-free telephone numbers for use by schools or others to obtain information about FFEL loans and free data transmission services for use by schools to electronically submit applicant loan processing information or student status confirmation data;

(viii) Payment of Federal default fees in accordance with the Act;

(ix) Items of nominal value to schools, school-affiliated organizations, and borrowers that are offered as a form of generalized marketing or advertising, or to create good will;

(x) Loan forgiveness programs for public service and other targeted purposes approved by the Secretary, provided the programs are not marketed to secure loan applications or loan guarantees; and

(xi) Other services as identified and approved by the Secretary through a public announcement, such as a notice in the FEDERAL REGISTER.

(3) For the purposes of this section—

(i) The term “school-affiliated organization” is defined in § 682.200.

(ii) The term “applications” includes the FAFSA, FFEL loan master promissory notes, and FFEL consolidation loan application and promissory notes.

(iii) The terms “other benefits” includes, but is not limited to, preferential rates for or access to a guaranty agency's products and services, computer hardware or non-loan processing or non-financial aid related computer software at below market rental or purchase cost, and the printing and distribution of college catalogs and other non-counseling or non-student financial aid-related materials at reduced or not costs.

(iv) The terms “premium,” “incentive payment,” and “other inducement” do not include services directly related to the enhancement of the administration of the FFEL Program that the guaranty agency generally provides to lenders that participate in its program. However, the terms “premium,” “incentive payment,” and “inducement” do apply to other activities specifically intended to secure a lender's participation in the agency's program.

(v) The term “emergency basis” for the purpose of staffing services to a school under paragraph (e)(1)(i)(F) of this section means a State- or Federally-declared natural disaster, a Federally-declared national disaster, and other localized disasters and emergencies identified by the Secretary.

(f) *College Access Initiative.* (1) A guaranty agency shall establish a plan to promote access to postsecondary education by—

(i) Providing the Secretary and the public with information on Internet web links and a comprehensive listing of postsecondary education opportunities, programs, publications and other services available in the State, or States for which the guaranty agency serves as the designated guaranty agency;

(ii) Promoting and publicizing information for students and traditionally underrepresented populations on college planning, career preparation, and paying for college in coordination with other entities that provide or distribute such information in the State, or States for which the guaranty agency serves as the designated guaranty agency;

(2) The activities required by this section may be funded from the guaranty agency's Operating Fund in accordance with § 682.423(c)(1)(vii) or from funds remaining in restricted accounts established pursuant to section 422(h)(4) of the HEA.

(3) The guaranty agency shall ensure that the information required by this subsection is available to the public by November 5, 2006 and is—

- (i) Free of charge; and
- (ii) Available in print.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9120, Feb. 19, 1993; 59 FR 22454, Apr. 29, 1994; 59 FR 25746, May 17, 1994; 59 FR 32923, June 27, 1994; 59 FR 33353, June 28, 1994; 59 FR 61428, Nov. 30, 1994; 60 FR 30788, June 12, 1995; 60 FR 31411, June 15, 1995; 60 FR 61757, Dec. 1, 1995; 61 FR 60436, 60486, Nov. 27, 1996; 62 FR 63434, Nov. 28, 1997; 64 FR 18978, Apr. 16, 1999; 64 FR 58627, Oct. 29, 1999; 64 FR 58959, Nov. 1, 1999; 65 FR 65650, Nov. 1, 2000; 66 FR 34763, June 29, 2001; 67 FR 67079, Nov. 1, 2002; 68 FR 75429, Dec. 31, 2003; 71 FR 45705, Aug. 9, 2006; 71 FR 64398, Nov. 1, 2006; 72 FR 62003, Nov. 1, 2007]

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

(a) *General.* (1) Rules governing the payment of claims based on filing for relief in bankruptcy, and discharge of loans due to death, total and permanent disability, attendance at a school that closes, false certification by a

school of a borrower's eligibility for a loan, and unpaid refunds by a school are set forth in this section.

(2) If a Consolidation loan was obtained jointly by a married couple, the amount of the Consolidation loan that is discharged if one of the borrowers dies or becomes totally and permanently disabled is equal to the portion of the outstanding balance of the Consolidation loan, as of the date the borrower died or became totally and permanently disabled, attributable to any of that borrower's loans that would have been eligible for discharge.

(3) If a PLUS loan was obtained by two parents as co-makers, and only one of the borrowers dies, becomes totally and permanently disabled, has collection of his or her loan obligation stayed by a bankruptcy filing, or has that obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan unless that borrower would qualify for discharge of the loan under these regulations.

(4) Except for a borrower's loan obligation discharged by the Secretary under the false certification discharge provision of paragraphs (e)(1)(ii) or (iii) of this section, a loan qualifies for payment under this section and as provided in paragraph (h)(1)(iv) of this section, only to the extent that the loan is legally enforceable under applicable law by the holder of the loan.

(5) For purposes of this section—

(i) The legal enforceability of a loan is conclusively determined on the basis of a ruling by a court or administrative tribunal of competent jurisdiction with respect to that loan, or a ruling with respect to another loan in a judgment that collaterally estops the holder from contesting the enforceability of the loan;

(ii) A loan is conclusively determined to be legally unenforceable to the extent that the guarantor determines, pursuant to an objection presented in a proceeding conducted in connection with credit bureau reporting, tax refund offset, wage garnishment, or in any other administrative proceeding, that the loan is not legally enforceable; and

(iii) If an objection has been raised by the borrower or another party about the legal enforceability of the loan and